



Senate

General Assembly

January Session, 2011

File No. 666

Senate Bill No. 1207

Senate, April 28, 2011

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING OFFERS OF COMPROMISE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 52-192a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2011*):

3 (a) [After] Except as provided in subsection (b) of this section, after
4 commencement of any civil action based upon contract or seeking the
5 recovery of money damages, whether or not other relief is sought, the
6 plaintiff may, not earlier than one hundred eighty days after service of
7 process is made upon the defendant in such action but not later than
8 thirty days before trial, file with the clerk of the court a written offer of
9 compromise signed by the plaintiff or the plaintiff's attorney, directed
10 to the defendant or the defendant's attorney, offering to settle the claim
11 underlying the action for a sum certain. For the purposes of this
12 section, such plaintiff includes a counterclaim plaintiff under section 8-
13 132. The plaintiff shall give notice of the offer of compromise to the
14 defendant's attorney or, if the defendant is not represented by an
15 attorney, to the defendant himself or herself. Within thirty days after

16 being notified of the filing of the offer of compromise and prior to the
17 rendering of a verdict by the jury or an award by the court, the
18 defendant or the defendant's attorney may file with the clerk of the
19 court a written acceptance of the offer of compromise agreeing to settle
20 the claim underlying the action for the sum certain specified in the
21 plaintiff's offer of compromise. Upon such filing and the receipt by the
22 plaintiff of such sum certain, the plaintiff shall file a withdrawal of the
23 action with the clerk and the clerk shall record the withdrawal of the
24 action against the defendant accordingly. If the offer of compromise is
25 not accepted within thirty days and prior to the rendering of a verdict
26 by the jury or an award by the court, the offer of compromise shall be
27 considered rejected and not subject to acceptance unless refiled. Any
28 such offer of compromise and any acceptance of the offer of
29 compromise shall be included by the clerk in the record of the case.

30 (b) In the case of any action to recover damages resulting from
31 personal injury or wrongful death, whether in tort or in contract, in
32 which it is alleged that such injury or death resulted from the
33 negligence of a health care provider, [an] the plaintiff may, not earlier
34 than three hundred sixty-five days after service of process is made
35 upon the defendant in such action, file with the clerk of the court a
36 written offer of compromise pursuant to subsection (a) of this section.
37 [shall state with specificity all damages then known to the plaintiff or
38 the plaintiff's attorney upon which the action is based. At least sixty
39 days prior to filing such an offer, the plaintiff or the plaintiff's attorney
40 shall provide the defendant or the defendant's attorney with an
41 authorization to disclose medical records that meets the privacy
42 provisions of the Health Insurance Portability and Accountability Act
43 of 1996 (P.L. 104-191) (HIPAA), as amended from time to time, or
44 regulations adopted thereunder, and disclose any and all expert
45 witnesses who will testify as to the prevailing professional standard of
46 care. The plaintiff shall file with the court a certification that the
47 plaintiff has provided each defendant or such defendant's attorney
48 with all documentation supporting such damages.]

49 (c) After trial the court shall examine the record to determine

50 whether the plaintiff made an offer of compromise which the
51 defendant failed to accept. If the court ascertains from the record that
52 the plaintiff has recovered an amount equal to or greater than the sum
53 certain specified in the plaintiff's offer of compromise, the court shall
54 add to the amount so recovered eight per cent annual interest on said
55 amount, except in the case of a counterclaim plaintiff under section 8-
56 132, the court shall add to the amount so recovered eight per cent
57 annual interest on the difference between the amount so recovered and
58 the sum certain specified in the counterclaim plaintiff's offer of
59 compromise. The interest shall be computed from the date the
60 complaint in the civil action or application under section 8-132 was
61 filed with the court if the offer of compromise was filed not later than
62 eighteen months from the filing of such complaint or application. If
63 such offer was filed later than eighteen months from the date of filing
64 of the complaint or application, the interest shall be computed from the
65 date the offer of compromise was filed. The court may award
66 reasonable attorney's fees in an amount not to exceed three hundred
67 fifty dollars, and shall render judgment accordingly. This section shall
68 not be interpreted to abrogate the contractual rights of any party
69 concerning the recovery of attorney's fees in accordance with the
70 provisions of any written contract between the parties to the action.

This act shall take effect as follows and shall amend the following sections:

Section 1	October 1, 2011	52-192a
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JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

This bill changes the timing and contents of offers of compromise for medical malpractice actions. There is no fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**SB 1207*****AN ACT CONCERNING OFFERS OF COMPROMISE.*****SUMMARY:**

By law, an offer of compromise is a written pretrial offer by the plaintiff to settle a civil lawsuit for a specific amount of money. If the defendant rejects the offer and the plaintiff's recovery is equal to or greater than the offer, the defendant must pay 8% interest plus court-assigned attorney's fees of up to \$350. In some circumstances, the interest is applied retroactively to the date the complaint was filed.

In medical malpractice actions, the bill changes the timing and eliminates the plaintiff's obligation to voluntarily (i.e., without a discovery order) provide the defendant with information. Currently, at least 60 days before filing an offer of compromise, the plaintiff must (1) state with specificity the damages on which the lawsuit is based, (2) provide a release for medical records, and (3) disclose all experts who will testify concerning the prevailing professional standard of care. The plaintiff must file a certification with the court indicating it has provided the defendant with all documentation supporting the damages claim.

Under the bill, the offer to compromise cannot be filed sooner than 365 days after the suit was filed.

EFFECTIVE DATE: October 1, 2011

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 39 Nay 6 (04/15/2011)